

Message Text

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PAGE 01 STATE 115392
ORIGIN EB-08

INFO OCT-01 ARA-10 ISO-00 FAA-00 DOTE-00 L-03 /022 R

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FM SECSTATE WASHDC
TO AMEMBASSY BRASILIA PRIORITY
INFO AMCONSUL RIO DE JANEIRO
AMCONSUL SAO PAULO

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E.O. 11652: N/A

TAGS: EAIR, BR

SUBJECT: AIRWORTHINESS CERTIFICATION OF BANDEIRANTE
AIRCRAFT

REF: (A) BRASILIA 2730, (B) BRASILIA 3395 AND
(C) STATE 60186

1. IN REPLY TO THE BRAZILIAN AIDE MEMOIRE QUOTED IN
REFTEL (A), THE EMBASSY SHOULD EMPHASIZE THAT THE FAA
WILL PROCEED PROMPTLY WITH TYPE CERTIFICATION ACTION ON
THE BANDEIRANTE EMB-110-P2 WHEN EVIDENCE HAS BEEN
SUPPLIED BY EMBRAER THAT THERE IS A U.S. PURCHASER OF
THIS AIRCRAFT.

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PAGE 02 STATE 115392

2. THE FAA WILL TAKE ACTION UPON A BRAZILIAN APPLICATION
FOR A U.S. TYPE CERTIFICATE FOR THE BANDEIRANTE EMB-110-P2
AIRCRAFT ON WHICHEVER OF THE FOLLOWING CERTIFICATION
BASES EMBRAER DESIRE TO PURSUE:

A) THE REQUIREMENTS OF FEDERAL AVIATION REGULATION
(FAR) PART 23 (NORMAL, UTILITY AND ACROBATIC CATEGORY)

IN EFFECT IN 1969, INCLUDING AMENDMENTS 23-1 THROUGH 23-7 AND SPECIAL CONDITIONS. THIS OPTION WOULD LIMIT THE AIRCRAFT TO GENERAL, NON-COMMERCIAL USE UNDER THE

GENERAL OPERATING AND FLIGHT RULES OF FAR PART 91.

B) THE REQUIREMENTS OF FAR PART 23 PLUS THE ADDITIONAL REQUIREMENTS OF FAR PART 135, APPENDIX A, WHICH WOULD MAKE THE AIRCRAFT ELIGIBLE FOR APPROVAL FOR U.S. AIR TAXI OPERATIONS UNDER THE EXISTING OPERATING RULES OF FAR PART 135. HOWEVER, THE FAA NOTICE OF PROPOSED RULE MAKING 77-17, ISSUED ON AUG. 19, 1977 TO UPGRADE THE SAFETY OF AIR TAXI OPERATIONS, CONTAINS A PROPOSED CHANGE TO PART 135 AIR TAXI OPERATING RULES WHICH WOULD PROHIBIT AN AIR TAXI CARRIER FROM OPERATING A SMALL AIRCRAFT WITH A PASSENGER CAPACITY OF TEN OR MORE THAT IS TYPE CERTIFICATED UNDER AIRWORTHINESS STANDARDS OTHER THAN PART 25 (TRANSPORT CATEGORY AIRCRAFT), UNLESS THAT AIRCRAFT WAS APPROVED FOR AIR TAXI OPERATIONS BEFORE AUGUST 19, 1977. THIS PROPOSED CHANGE IN PART 135 PERTAINS TO OPERATING REGULATIONS FOR AIRCRAFT USED IN AIR TAXI SERVICE AND NOT TO BASIC AIRWORTHINESS REQUIREMENTS FOR CERTIFICATION OF AIRCRAFT DESIGN UNDER THE U.S.-BRAZILIAN AIRWORTHINESS AGREEMENT.

C) THE REQUIREMENTS OF FAR PART 25, WHICH WOULD MAKE LIMITED OFFICIAL USE

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PAGE 03 STATE 115392

THE AIRCRAFT ELIGIBLE FOR APPROVAL FOR TRANSPORT OPERATIONS IN THE U.S.

3. THE PROPOSED CHANGE IN THE FAA RULE ON AIR TAXI OPERATIONS PERTAINS NOT ONLY TO FOREIGN PRODUCED AIRCRAFT BUT ALSO TO DOMESTICALLY PRODUCED AIRCRAFT. THE COMMITTEE ON GOVERNMENT OPERATIONS OF THE U.S. HOUSE OF REPRESENTATIVES IN A RECENT HEARING ON AIRLINE DEREGULATION AND AVIATION SAFETY STRONGLY SUPPORTED THESE UPGRADED REQUIREMENTS TO GIVE COMMUTER AIRLINE PASSENGERS A LEVEL OF SAFETY EQUIVALENT TO THAT AFFORDED SCHEDULED CERTIFICATED AIR CARRIER PASSENGERS. MOREOVER, A LEGISLATIVE PROPOSAL HAS BEEN INTRODUCED WHICH WOULD REQUIRE FAA TO TAKE INTO ACCOUNT SAFETY STANDARDS APPLICABLE TO AIR CARRIER SERVICE WHERE IT IS BEING REPLACED BY COMMUTER AIR SERVICE.

4. WITHOUT A SALE IN THE U.S. FOR THE BANDEIRANTE EMB-110-P2 THERE WOULD BE SEVERAL PROBLEMS IN FAA TYPE CERTIFICATION. 1) THE U.S.-BRAZILIAN AIRWORTHINESS AGREEMENT OF JUNE 16, 1976 APPLIES ONLY TO CIVIL AERONAUTICAL PRODUCTS PRODUCED IN ONE CONTRACTING STATE

AND EXPORTED TO THE OTHER CONTRACTING STATE. 2) FEDERAL AVIATION REGULATION 21.29 AND CLARIFYING FAA POLICY ISSUED IN AUGUST 1976 PRECLUDE THAT AGENCY FROM ACCEPTING AN APPLICATION FOR TYPE CERTIFICATION OF A FOREIGN PRODUCT UNLESS BONA FIDE EVIDENCE IS PRESENTED THAT THE

PRODUCT IS TO BE IMPORTED INTO THE US. (3) FAA CANNOT AFFORD TO USE ITS MANPOWER FOR TYPE CERTIFICATION OF FOREIGN PRODUCTS IF THEY ARE NOT GOING TO BE SOLD IN THE US. IT WOULD APPEAR THAT THE TYPE CERTIFICATION BY OTHER COUNTRIES OF THE EMB-110-P2, MENTIONED IN THE FOURTH PARAGRAPH OF THE BRAZILIAN AIDE MEMOIRE, WAS BASED ON SALES TO THOSE COUNTRIES.

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PAGE 04 STATE 115392

5. FYI. FAA BELIEVES THAT ITS CERTIFICATION OF FOREIGN PRODUCTS NOT DESTINED FOR THE US CAN BE EXPECTED TO CAUSE US MANUFACTURERS TO LOSE SALES TO THIRD COUNTRIES ON THE BASIS OF THE FAA "GOODHOUSEKEEPING" SEAL OF APPROVAL. CONSEQUENTLY THE US MANUFACTURERS AGREE WITH THE FAA "CUSTOMER FIRST" POLICY AND FAR 21.29. FURTHERMORE, FAA HAS NO REASON TO BELIEVE THAT THIS POLICY WILL AFFECT SALES OF LARGE US AIRCRAFT TO BRAZIL. END FYI.

6. AS EMBASSY'S CHARGE HAS ALREADY INFORMED AMBASSADOR DE LIMA, FAA REGULATIONS ARE NOT INFLUENCED BY CESSNA'S UNHAPPINESS OVER ITS LACK OF ACCESS TO THE BRAZILIAN MARKET. CHRISTOPHER

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